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Structuring Ethical Values through Clinical Legal Education

Philip Drake & Stuart Toddington



Structuring ethical values through clinical legal education

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Inspiring tomorrow's professionals

- **Our Jurisprudential Foundations**

Inspiring tomorrow's professionals



Does the common law system protect civil liberties?

- ***'The case against common law'***

Professor Conor Gearty's Lecture at LSE on the 6th November 2014, covered in the Law Society Gazette, 10th November 2014

- *'The courts were happy [prior to the Human Rights Act] to act as benign legitimating forces... their various rulings serving to throw the necessary constitutional camouflage over successive exercises of raw state violence.'*
- Following the Human Rights Act these judges *'... took to human rights as their penance for past sins'*.
- What would be the position if the HRA was removed?
- Is it important to question the rules where justice is threatened?
- Should the rule of law be manipulated to achieve justice or avoid injustice?

In the Matter of D (A Child) [2014] EWFC 39.

- The parents predicament was stark, indeed shocking...
 - Facing the permanent loss of their child;
 - Had learning difficulties and unable to represent themselves;
 - Could not afford legal representation.
- To require them to proceed without proper representation would be unconscionable; unjust; involve a breach of Articles 6 and 8; and be a denial of justice.
- D is also entitled to a fair trial.
- Directed a hearing to decide who will fund the costs of representation:
 - the Local Authority;
 - the Legal Aid Fund; or
 - Her Majesty's Courts and Tribunals Service.
- Could or would this challenge have been made without the existence of the HRA?

Ethical norms and values in the clinical environment

- Are rules necessary to think ethically?
- Important *how* we educate our law students in ethics.
- What are our ethical values within the clinical environment?
- Impact upon the social wellbeing of students
 - Sheldon & Krieger.
- What cases should we take on?
- Social norms and values for the practising lawyers of the future.
- Reflection and ethical autonomy in the clinical environment.

Legal Education Training Review

- *"... the teaching and maintenance of professional ethics and values are central to the assurance of integrity in the administration of justice and quality across the entire legal services sector". (Page vii)*
- *"... the teaching and maintenance of professional ethics and values are central to the assurance of integrity in the administration of justice and quality across the entire legal services sector". (Page vii)*
- *"... strengthen requirements for education and training in legal ethics, values and professionalism..." (page ix)*

• Ethical development and values

**MORAL CHARACTER /
COURAGE**

MORAL MOTIVATION

MORAL JUDGEMENT

MORAL SENSITIVITY

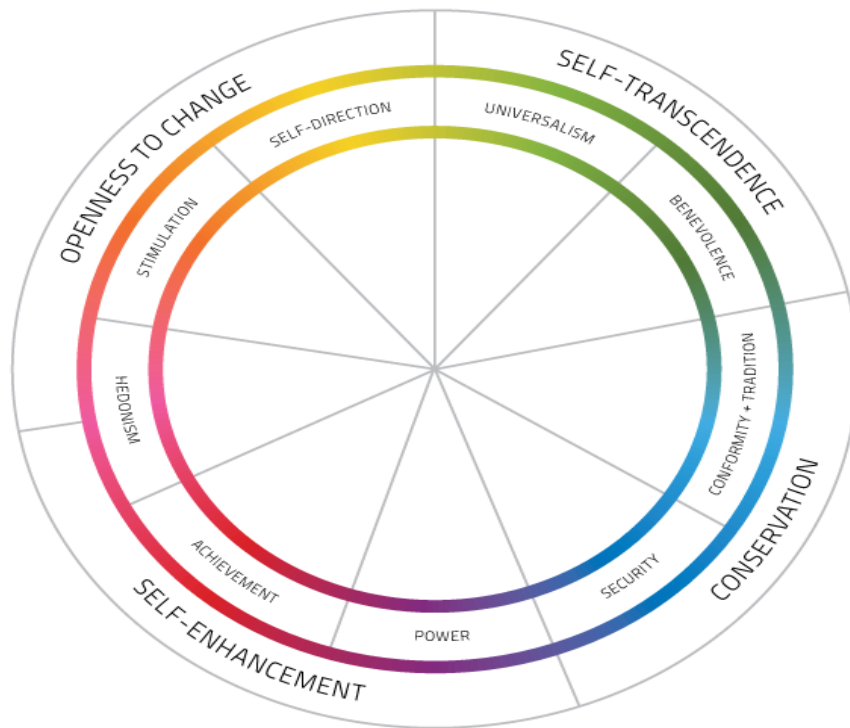
**Rest's model of
ethical development**

- Values influence our goals; our decision making; and our motivations.
- What are the values of the legal profession?

Schwartz's Value Circumplex

<http://valuesandframes.org/handbook/2-how-values-work/>

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UNIVERSALISM
UNDERSTANDING, APPRECIATION, TOLERANCE
AND PROTECTION FOR THE WELFARE OF ALL
PEOPLE AND FOR NATURE.

BENEVOLENCE
PRESERVATION AND ENHANCEMENT OF THE
WELFARE OF PEOPLE WITH WHOM ONE IS IN
FREQUENT PERSONAL CONTACT.

TRADITION
RESPECT, COMMITMENT AND ACCEPTANCE OF
THE CUSTOMS AND IDEAS THAT TRADITIONAL
CULTURE OR RELIGION PROVIDE THE SELF.

CONFORMITY
RESTRAINT OF ACTIONS, INCLINATIONS AND
IMPULSES LIKELY TO UPSET OR HARM OTHERS
AND VIOLATE SOCIAL EXPECTATIONS OR NORMS.

SECURITY
SAFETY, HARMONY, AND STABILITY OF SOCIETY,
OF RELATIONSHIPS, AND OF SELF.

POWER
SOCIAL STATUS AND PRESTIGE, CONTROL OR
DOMINANCE OVER PEOPLE AND RESOURCES.

ACHIEVEMENT
PERSONAL SUCCESS THROUGH DEMONSTRATING
COMPETENCE ACCORDING TO SOCIAL STANDARDS.

HEDONISM
PLEASURE AND SENSUOUS GRATIFICATION
FOR ONESELF.

STIMULATION
EXCITEMENT, NOVELTY AND CHALLENGE IN LIFE.

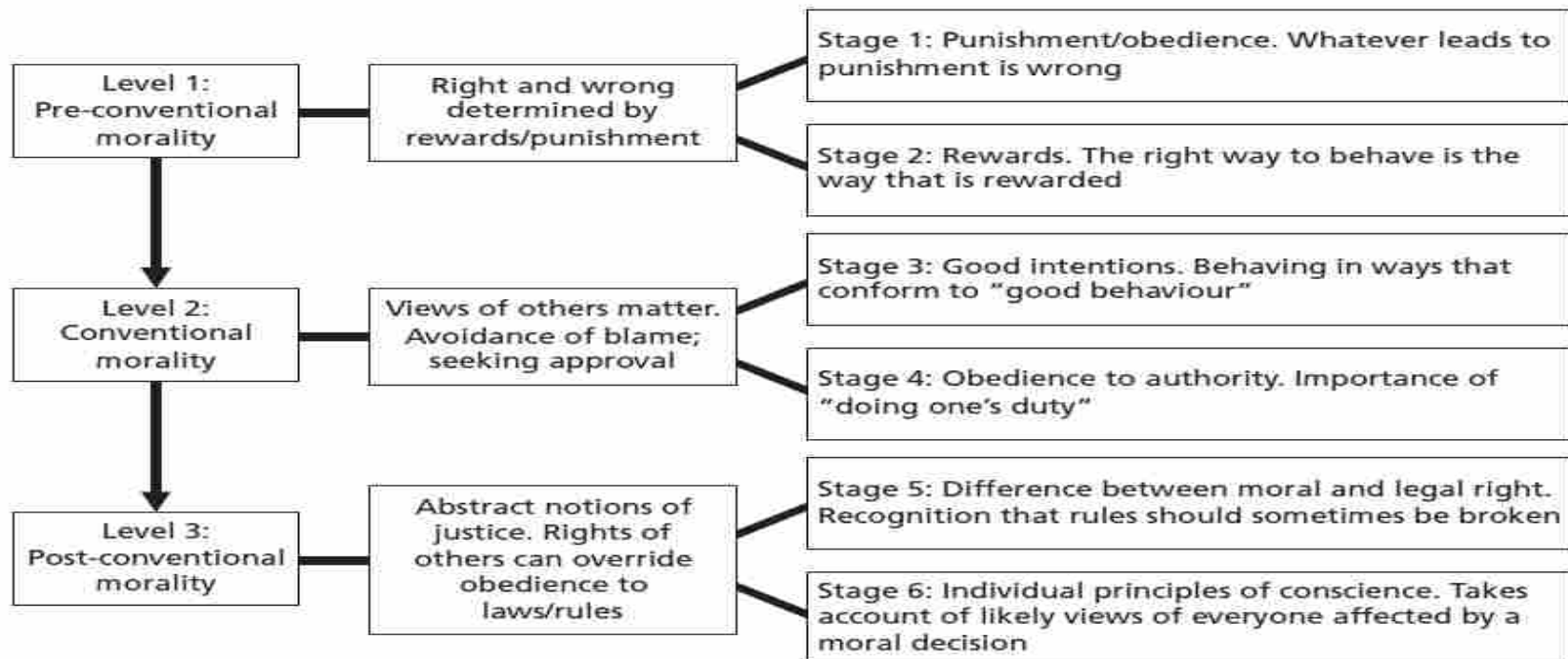
SELF-DIRECTION
INDEPENDENT THOUGHT AND ACTION - CHOOSING,
CREATING, EXPLORING.

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Kohlberg's levels of ethical awareness

<http://mdeering.weebly.com/lawrence-kohlberg.html>





Final thoughts...

- Access to justice no longer available to all.
- Should justice and more particularly, social justice, be a central value of the legal profession?

